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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1664 OF 2016

Commissioner of Income Tax Central-1 ...Appellant
vs
Ajitabh Bachchan ...Respondent.

WITH

INCOME TAX APPEAL NO. 1557 OF 2016

Pr. Commissioner of Income Tax Central-1 ...Appellant
vs
Ajitabh Bachchan ...Respondent.

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Mr Suresh Kumar, advocate for the Appellant in both appeals.
Mr Atul Jasani for the Respondent in both appeals.

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CORAM : AKIL KURESHI &
B.P.COLABAWALLA, JJ.
FEBRUARY 01, 2019.

P.C. :

Both these appeals arising on the similar background and concern the same assessee. The issue being short, we have heard the learned counsel for parties for final hearing, at this stage.

2 The appeals are filed by the revenue to challenge the Judgment of the Income Tax Appellate Tribunal raising the following questions for our consideration.

"(1) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in law to hold that Assessing Officer while taxing deemed dividend under section 2(22)(e) of the IT Act 1961 had not taken into consideration the facts that Moonrise Engineering (Bom) P Ltd. (hereinafter referred to as Moonrise) had taken unsecured loan from Lotus Investment Ltd (hereinafter referred to as Lotus) and Moonrise Ltd did hold any shares of Lotus and similarly Lotus also did not own any shares of Moonrise without appreciating that the assessee held substantial share of 50 % and 29 % in Moonrise and Lotus respectively?

(2) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in law to set aside the issue to the file of Assessing Officer, with a direction to look into whether the amount of loan given by Lotus to Moonrise is to be taxed as deemed dividend in assessee's hand or in any other shareholder's hand without appreciating the fact that the assessee had substantial interest and therefore deemed dividend had been correctly taxed in the hands of the assessee?".

3 At the outset, the learned counsel for the respondent – assessee pointed out that by the impugned judgment the Tribunal has remanded the issue of applicability of Section 2(22)(e) of the Income Tax Act, 1961 before the Assessing Officer for fresh consideration. He stated that pursuant to such judgment of the Tribunal, the Assessing Officer has already passed a fresh order holding against the assessee, against which the assessee is in appeal before the Commissioner. He, therefore, submits that the present appeals may not be entertained.

4 On the other hand learned counsel for the revenue submitted that while restoring the issue before the Assessing Officer, the Tribunal has made certain observations which the revenue does not accept.

5 Learned counsel for the assessee agreed that the directions of the Tribunal may be treated as remand for fresh consideration without any further observation or direction to decide the issue in a particular manner.

6 In this view of the matter, now that the Assessing Officer has already passed a fresh order, we do not see any reason to entertain these appeals any longer. However, before disposal of these appeals, we clarify that the issue at hand will be decided in further proceedings uninfluenced by any of the observations made by the Tribunal in the impugned judgment. In other words, the entire issue be judged independently and on the basis of the applicable law. With these observations, both the appeals are disposed of. No order as to costs.

(B.P.COLABAWALLA, J.) **(AKIL KURESHI, J.)**